Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	MB Docket No. 02-277
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 01-235
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-317
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 00-244
	)	
Definition of Radio Markets	)	

REPLY COMMENTS OF
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN
MEDIA ALLIANCE
COMMON CAUSE
BENTON FOUNDATION

Of Counsel:
Jessica Gonzalez
Graduate Fellow
Sandy Lin
Jeff Myung
Trevor Stanley
Law Students
Georgetown University Law Center

Angela J. Campbell, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

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SUMMARY

UCC et al. disagree with the claims of industry commenters that the FCC's studies support repeal or relaxation of the broadcast ownership rules.

Specifically, we rebut the claims of industry parties that Study 6's finding that cross-owned stations differ little from other major network affiliates with regard to partisan slant supports repeal of the cross-ownership prohibition. Just because Study 6 finds that owners did not exercise their ability to slant election coverage in the small number of programs examined, does not mean that station owners do not slant the news at other times. Study 6's findings regarding slant are quite limited, and cannot be generalized outside of the narrow election context. They are also based on numerous questionable assumptions and do not meet Data Quality Act requirements.

Next, we address NAB's argument that Study 4.1 supports relaxation of the television duopoly rule. We show that Study 4.1's findings are either overstated, contradicted by other findings, or derived using flawed methodologies. Moreover, a more recent study from the University of Delaware, which unlike Study 4.1 distinguishes between local news and total news, finds that duopoly status negatively affects both the amount of total news and proportion of local news content.

We also urge rejection of Clear Channel and NAB's claim that further relaxation of the radio ownership limits is needed for the radio industry to remain profitable. It is not the FCC's role to ensure a company's financial success; rather, it must ensure that the public interest is served by making sure radio stations provide diverse programming that serve local needs. Moreover, nothing in any of the studies suggests that owning radio (or television) stations is no longer financially viable.

Finally, we respond to several commenters who argue that ownership limits are unnecessary because market forces, as opposed to ownership characteristics, determine programming content. Although audience demand exerts some influence on licensees' decisions about what programs or views to present, it does not mean that ownership is not an important factor. Nor do any of the studies find that ownership is irrelevant.

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REPLY COMMENTS ON RESEARCH STUDIES ON MEDIA OWNERSHIP BY
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN
MEDIA ALLIANCE
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BENTON FOUNDATION

The Office of Communication of the United Church of Christ, Inc. ("UCC"), the National Organization for Women ("NOW"), Media Alliance, Common Cause, and the Benton Foundation, by their attorneys, the Institute for Public Representation ("IPR"), respectfully submit reply comments in response to comments of other parties concerning the FCC's ten research studies on media ownership.

Because the Commission has afforded only a very brief period for reply, these comments address only some of the issues presented in the comments on the studies.

I. Studies 3, 4.1 and 6 Do Not Support Repeal of the Newspaper-Broadcast Cross-Ownership Rule

Industry commenters generally argue that Studies 3, 4.1 and 6 support repeal of the newspaper broadcast cross-ownership rule. This is not surprising because, as demonstrated by Consumers Union, the FCC seems to have selected the topics and researchers for the purpose of building a record for repealing the rule. Moreover, as UCC et al. showed, the studies were written in such a way as to highlight results that support deregulation and bury results that support retaining or strengthening the rules. Nonetheless, industry commenters have overstated the importance of the findings in certain key respects.

A. Study 6 Does Not Support the Claim that Newspaper-Broadcast Cross-Ownership Has No Effect on Diversity

Tribune argues that Study 6 "finds that the newspaper rule provides no corresponding gain in 'viewpoint diversity' [because] [t]here is no statistically significant correlation between the slant of a newspaper and the slant of its cross-owned broadcast station."[1] Similarly, others argue that the cross-ownership rule is unnecessary because Study 6 shows that cross-owned entities do not "speak with one voice,"[2] or finds a "lack of connection between ownership and viewpoint."[3] However, just because Study 6 finds that owners did not exercise their ability to slant election coverage in the small number of programs examined, does not mean that station

[1] Comments of Tribune Company at 6 (filed in MB Dkt. 06-121) (Oct. 23, 2007) [hereinafter Tribune] (emphasis omitted).

[2] Comments of Media General at 12 (filed in MB Dkt. 06-121) (Oct. 23, 2007) [hereinafter Media General]; Comments of The Newspaper Association of America at 4 (filed in MB Dkt. 06-121) (Oct. 23, 2007) [hereinafter NAA].

[3] Media General at 12; Comments of The National Association of Broadcasters at 8 (filed in MB Dkt. 06-121) (Oct. 22, 2007) [hereinafter NAB].

owners do not slant the news at other times. As Consumers Union et. al. point out, the incentives to slant the news may be much stronger outside of election periods, especially where local issues are involved.[4] Moreover, the Commission emphasized in its 2002 Biennial Review Order that "even if our inquiry were to find that media outlets exhibited no apparent 'slant' or viewpoint in their news coverage, media outlets possess significant potential power in our system of government. *We believe sound public policy requires us to assume that power is being, or could be, exercised*."[5]

1. Even Accepting the Findings of Study 6 at Face Value, They Do Not Support the Broad-Based Claims of Industry Commenters

Even if the FCC were to accept the findings of Study 6 at face value, they are quite limited and cannot support the broad-based claims of industry commenters. Since Study 6 examined only a small number of issues during a three day period before elections, its findings regarding impact of cross-ownership on slant cannot be generalized to represent the impact of cross-ownership on diversity.[6] Moreover, "slant," as that term is defined in Study 6, makes up an extremely small component of viewpoint diversity because Milyo looks only at four factors: speaking time allocated to candidates; candidate coverage; partisan issue coverage; and opinion

[4] Comments of Consumers Union, Consumer Federation of American and Free Press at 102-03 (filed in MB Dkt. 06-121) (Oct. 23, 2007) [hereinafter Consumers Union].

[5] *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to 202 of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 13620, 13630 (2003) [hereinafter 2002 Biennial Review Order] (emphasis added). In fact, the FCC "do[es] not pass judgment on the desirability of owners using their outlets for the expression of particular viewpoints" and assumes that it is their prerogative. *Id.*

[6] *See* Comments of United Church of Christ, National Organization for Women, Media Alliance, Common Cause and Benton Foundation (filed in MB Dkt. 06-121) (Oct. 23, 2007) [hereinafter UCC].

polls favoring one party or the other.[7] Milyo examined only 12 "Democratic issues" and 10 "Republican issues."[8] Most were national issues, for example, stem cell research, gay marriage, tax cuts and unemployment.[9] The partisan issue list did not include many of the topics often covered by local television news such as crime, courts, corrections, health issues, the environment, education, city government, fires, or consumer issues.[10] Although elections and partisan politics are important, viewpoint diversity requires that the public have access to contrasting views on a much wider variety of issues.

Moreover, in many instances, the commenters overstate or misstate the conclusions of Study 6. Media General, for example, states that Study 6 "found no significant relationship between the editorial endorsements of the cross-owned newspapers ... [and] the 'political slant' of the television broadcasts."[11] However, this conclusion is not supported by Table 17, which found the editorial leaning of the cross-owned newspaper was *positively and statistically significantly* associated with 5.5 to 6.3 more seconds of speaking time for the candidate of the party endorsed.[12] Milyo concedes the significant magnitude of this result: "this 6 second differential ... is about 25% of the average state and local candidate speaking time for non-cross-owned stations."[13] Therefore, Study 6 shows a link between the editorial endorsement of the cross-owned newspaper and the political leaning of the cross-owned stations.[14]

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[7] Study 6 at Abstract.
[8] Study 6 at 52, Table A1.
[9] *Id.*
[10] *See, e.g.*, Danilo Yanich, *Ownership Matters? Content Localism & Ownership on Local Television News* (2007) at 9 [hereinafter *Yanich*].
[11] Media General at 11.
[12] Study 6 at Table 17.
[13] *Id.* at 27.
[14] *See also* Consumers Union at 103-07 (observing that Study 6's data actually shows that cross-owned stations lean Republican).

Industry commenters also cite Study 6's conclusion that "the difference in [campaign] contributions made to Democrats versus Republicans is unrelated to the political slant of political news coverage"[15] for their claim that there is a "lack of connection between ownership and viewpoint."[16] However, industry commenters ignore findings that on television stations cross-owned with newspapers, "the relative coverage of candidates in either party increases by about 5 seconds per $100,000 in net candidate contributions (in the direction of the party receiving the contributions); or about 8% of the average of total candidate coverage for non-cross-owned stations."[17] Thus, Study 6's finding that cross-owned stations afford more time to candidates of the party receiving campaign contributions by their owners undermines industry claims that ownership has no influence on content.

2. Study 6 Does Not Meet the Data Quality Act Standards for Influential Scientific Information

As the Center for Regulatory Effectiveness has pointed out, "OMB government-wide guidelines require that 'influential' scientific information be subject to ... a reproducibility requirement."[18] The Study 6 peer review, however, "was unable to exactly replicate any of the main specifications of interest."[19] After discussing the problem with the author, he determined that there were errors in the dataset used to produce the original results. Even when he attempted to replicate results using the erroneous data, he was unable to replicate all results. Of course,

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[15] Study 6 at 27.
[16] *See, e.g.*, Media General at 11-12; NAA at 17; Belo at 9; Comments of Morris Communications Company at 7 (filed in MB Dkt. 06-121) (Oct. 23, 2007) [hereinafter Morris].
[17] Study 6 at 27.
[18] Comments of The Center for Regulatory Effectiveness, Comments on Media Ownership Studies 4 and 6 at 3 (filed in MB Dkt. 06-121) (Oct. 15, 2007) [hereinafter CRE].
[19] Matthew Gentzkow, *Peer Evaluation of FCC Media Ownership Study 6* at 1 [hereinafter *Gentzkow*].

even if he successfully replicated the results using erroneous data, it would not mean that Milyo's results were correct, since the underlying data was erroneous.

The peer review further notes that the procedure for identifying partisan issues was subjective and "there is little detail on how [partisan] issues were defined or how the author assessed whether an issue 'appeared repeatedly and prominently on the websites of one party but not the other.'"[20] Milyo states that the partisan issue list was "compiled by viewing the websites of each major party and each major party candidate for state governor or US Senate in every state intersecting any of the DMA[s]" three times during the week prior to the general election.[21] However, he does not identify the web addresses, the dates visited, or how much of the website was viewed. Without providing copies of the websites and pages visited, this part of Study 6 is not replicable.

Moreover, Milyo does not follow his stated methodology. He explains that "[a]ny issue or event that appeared repeatedly and prominently on the websites of one party, *but not the other* was classified as a 'partisan issue.'"[22] Then he goes ahead to list "endorsements" as both a Democratic and a Republican issue.[23] Because of these reproducibility problems, Study 6 cannot be relied upon by the Commission.

3. Study 6's Analysis of Slant Is Based on Flawed Methodologies

Replication difficulties aside, Study 6 suffers from a more fundamental methodological problem: the metrics used to measure partisan slant are plainly incorrect. None of the four measures of political slant—speaking time allowed to candidates of either party, candidate

[20] *Id.* at 2.
[21] Study 6 at 11.
[22] Study 6 at 11 (emphasis added).
[23] Study 6 at Table A1.

coverage, time spent on partisan issues, time spent on covering opinion polls favoring one party over another—is an appropriate proxy for political slant.

For example, consider the measure "candidate speaking time." A newscast might show a candidate saying something offensive or stupid.[24] Such unflattering coverage would not be favorable to that candidate. The same logic applies to the other metrics as well. For example, although Milyo identifies "gay marriage" as a Republican issue, one could easily imagine that two different local newscasts devoting the same amount of time to a story on "gay marriage" could cover the topic in very different manners. Study 6, however, would count both as having a Republican slant, even if one painted a sympathetic picture of gay marriage while the other was critical of gay marriage.[25]

Yet another problem arises with the way that Milyo examines "whether differences in campaign contributions tied to the corporate ownership of each television station have any effect on partisan slant."[26] One would expect that "corporate ownership" would mean the people who own or control the parent corporations, or perhaps senior executives. However, under Milyo's definition of corporate ownership, any "persons in the employ of the parent company," are counted as political contributions of the corporate ownership. [27] By looking at the political

[24] For example, Trent Lott's comments about segregation or John Kerry's botched joke (which Milyo classifies as Republican issues). Study 6 at 11.

[25] Similarly, suppose Station A airs three stories relating to the Mark Foley scandal, an issue categorized as Democratic in Study 6, and Station B airs two stories relating to the scandal. All of Station A's three stories show Republican politicians testifying that that Foley's actions are his alone and that Republicans were not aware of these incidents, while Station B's two stories emphasized that many Republicans allegedly knew and turned a blind eye to Foley's multiple sexual advances. Because Station A devotes more time than Station B to a "Democratic issue, under Study 6's criteria, Station A would be found to have a Democratic slant relative to Station B, when in reality, Station A has a Republican slant and Station B has a Democratic slant.

[26] Study 6 at 27.

[27] *Id.* at 13.

contributions of employees, whether executives, secretaries or janitors, instead of owners (whose interests are often not same), Study 6 cannot accurately measure the political leanings of media owners.

B. The Studies Do Not Support Industry Commenter's Claim that Cross-Ownership Harms Localism

Tribune asserts that "the Milyo Report confirms ... that the newspaper rule harms localism" because "Milyo finds that cross-owned stations offer more news overall, more local news, more local weather and sports, and more coverage of state and local politics than other stations."[28] Newspaper Association of America similarly reasons that "newspaper/broadcast cross-ownership enables broadcast stations to devote more resources to both national and local news. Thus... the current ban undermines the Commission's *localism objectives* and disserves the public interest."[29] In fact, however, the studies do not support any broad claims regarding the impact of cross-ownership on localism.

As Consumers Union has painstakingly pointed out, localism is a complex and expansive notion that encompasses concerns such as communications with the community, nature and amount of community responsive programming, political programming, underserved audiences, disaster warnings, tastes of the community, and local origination, to name a few.[30] Yet, none of the FCC studies examine the impact of newspaper-broadcast cross-ownership on these other aspects of localism. Instead, the studies engage in the myopic pursuit of examining the *quantity*

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[28] Tribune at 5.
[29] NAA at 15 (emphasis added).
[30] *See* Consumers Union at 26.

of news produced.[31] In sum, because the studies fail to examine most aspects of localism, they do not justify repeal of the cross-ownership rule in the name of promoting localism.

C. The Studies Do Not Support a Blanket Repeal of the Cross-Ownership Ban, Nor Do They Offer Any Guidance on How Market-Based Numerical Limits Should Be Devised.

Industry commenters have taken different positions on how the cross-ownership rule should be modified. Media General asserts that "missing from all of these studies is any indication that the results are dependent on market size. The studies support full repeal of the rule and in no way show that a rule based on market size is defensible."[32] Tribune, on the other hand, asserts that the record in this proceeding "demonstrates that the newspaper rule should be repealed for *all but the smallest markets*."[33] Both are wrong.

The studies do not support a blanket repeal of the cross-ownership ban, as Media General argues they do. While it is true that the studies do not indicate that the results are dependent on market size, it is because none looks at the market wide effect of cross-ownership nor attempts to differentiate markets in determining the effect of cross-ownership. For example, Study 3 analyzes the correlations between cross-ownership and various types of TV programming, but does not examine how these correlations vary according to market size.[34] Similarly, although Study 4.1 looked at many different variables, including DMA Per Capital Income, Unrelated Station DMA Count, and Parent Revenue Count, it did not consider the impact of the

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[31] Consumers Union also points out that even the conclusion that cross-ownership will result in more news turns out to be wrong when the data is examined on a market wide rather than station basis. Consumers Union at 95.
[32] Media General at 13.
[33] Tribune at 1.
[34] *See* Gregory Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming* at Tables 17-25 [hereinafter Study 3].

intersections of cross-ownership and market size.[35] Study 6 "examines whether cross-ownership of a newspaper and television station influences the content or slant of local television news broadcasts,"[36] employing only the statistical method that makes *within-market comparisons* between cross-owned and non-cross-owned stations. As a result, Study 6 fails to examine how the impact of cross-ownership varies across different market characteristics.

The failure of these studies to make market-to-market comparisons of the impact of cross-ownership also means that the studies do not support numerical limits on cross-ownership dependent on market size, as Tribune argues that they do. Nor do they offer the Commission any guidance on what numerical limits are appropriate and which market characteristics should be considered in devising a new set of limits.

In sum, Study 6, the only study to examine content, does not support the industry commenters' claim that the newspaper-broadcast cross-ownership rule has no effect on diversity. Nor does it, or any other study, support the claim that repeal of the rule would advance the public interest goal of localism, beyond the narrow and questionable finding that cross-owned stations air a slightly higher quantity of news programming. And because the studies fail to analyze how cross-ownership impacts markets of different sizes, they neither provide justification for a blanket repeal or for devising a new cross-ownership limit.

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[35] *See* Daniel Shiman, *News Operations: The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* at Tables I-6 – I-9 [hereinafter Study 4.1].
[36] Study 6 at 1.

II. Study 4.1 Does Not Support Relaxing the Local Television Rule

NAB is the only commenter that addresses how the studies relate to the local television rule.[37] It argues that Study 4.1 shows that localism and diversity benefits flow from duopolies. However, Study 4.1's findings are unreliable and contradictory. Moreover, Study 4.1's findings are contradicted by a recent study from the University of Delaware examining the impact of duopolies.

A. NAB Relies on "Findings" of Study 4.1 that Are Overstated or Contradicted by Other "Findings" in the Same Study

NAB cites Study 4.1 to suggest that co-ownership of television stations in the same market "has a large, positive, statistically significant impact on the quantity of news programming."[38] However, as UCC et al. already showed in its comments, this finding is overstated because it counts advertising and other non-news programming as news, includes rebroadcast and repurposed news programs (that add nothing to diversity), and makes no distinction between local news and national or international news, even though local news is both more expensive to produce and more valued by consumers.[39]

NAB next argues that the "formation of duopolies enables stations to improve their financial position" and "only financially viable stations can sustain costly local services, including news and other local programming."[40] It argues that Study 4.1's finding that the "financial strength of the parent' of a television station 'measured by its revenues, is associated

[37] Sinclair's comments are limited to critiquing Study 3's attempt to show that the top-four limitation is arbitrary.
[38] NAB at 13, *quoting* Study 4.1 at I-21.
[39] UCC at 15.
[40] NAB at 14.

with a larger news output,'" supports relaxing the duopoly rule.[41] Again, however, this finding is both questionable and of limited relevance.

While it may be true that only financially viable stations can provide local services including news, none of the studies show that local television stations are not financially viable. Indeed, none of the studies even looks at the financial status of the television business. In the absence of evidence that duopolies are necessary to a station's financial viability, there is no need to permit duopolies. Where it can be shown that forming a duopoly is necessary to station survival, the acquiring licensee can obtain a waiver under the failing station rule.

In any event, Study 4.1's "finding" that that higher parent revenue "is associated with a larger news output," must be regarded with caution for several reasons. First, the finding is not consistent across different regression models. While Study 4.1 finds a small (0.27) statistically significant effect under the Three-Way Group Effects Model (Table 1.6), under the Controlled for Market Model (Table 1.7), it has no effect, and under the Full Fixed Effect Model (Table 1.7), higher parent station revenue has a *negative*, statistically significant effect. Thus, the finding of a correlation between higher parent revenue and minutes of news is not robust. [42] NAB also ignores Study 4.1's finding that higher parent station revenue actually decreases the amount of public affairs minutes shown by a television station. And, unlike the result for news, the effect of parent revenue on the provision of public affairs minutes remains negative regardless of the model employed.[43]

[41] *Id.* at 14, *quoting* Study 4.1 at I-21.
[42] *See* Study 4.1 at I-24.
[43] *Id.*

In addition, Study 4.1 finds that members of "large station groups tend to have less news output."[44] As the peer review points out, it is "hard to rationalize" the finding that ownership by a larger station group decreases news with the finding that that ownership by a major network increases news because they "are seemingly at odds with each other since they both relate to scale economies in news programming."[45] Similarly, the finding that higher parent station revenue increases news is difficult to reconcile with the finding that large station groups decrease news, since large station groups are likely to have higher revenues. Study 4.1 provides no basis for determining which conflicting hypothesis is correct.

Study 4.1 is also questionable because it fails to properly test whether the independent variables and the dependent variables, news and public affairs, have non-linear relationships. As the peer review notes, "it would be desirable to check if the results of [sic] robust to defining the dependant variable as the log of news (or public affairs) minutes."[46] It is questionable whether higher parent revenues can have a linear relationship with the provision of news since, given the limited number of minutes of programming per day and competing program obligations, news minutes cannot continue increasing indefinitely as parent revenue increases. Thus, it is unclear what the actual impact of the parent revenue variable is on the quantity of news.

B. A New Study From the University of Delaware Finds That Duopoly Ownership Results in Less Local News Content

As noted, one of the main problems with Study 4.1 is that it fails to distinguish between local and non-local news. A new study by Professor Danilo Yanich, of the Local Television News Media Project at the University of Delaware, *Ownership Matters? Content, Localism &*

[44] *Id.* at I-21.
[45] Phillip Leslie, *Review of "The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming" by Daniel Shiman* at 3 [hereinafter *Leslie*].
[46] *Leslie* at 2-3.

Ownership on Local Television News,[47] does draw this distinction in examining the impact of ownership structure on news content.[48] This study finds that duopoly status negatively affects both the amount of total news and proportion of local news content.[49]

This study utilizes the same database of television newscasts originally recorded by the Project for Excellence in Journalism (PEJ) in 1998 that was used by FCC economists in the suppressed localism study. However, that database is supplemented by newscasts recorded by PEJ in 2002. The study focuses on the five DMAs (New York, Los Angeles, Chicago, Boston, and Albuquerue) present in both databases so as to examine the impact of duopolies, which did not exist until after the FCC relaxed the local television rule in 1999.[50] The dataset includes 280 broadcasts from the five markets, yielding 4,021 separate stories, excluding sports and weather.[51] The sample was drawn during both sweeps and non-sweeps periods in March, April and May of 1998 and 2002, and in August of 2002.[52] The stories were coded and categorized by topic and placement.[53] The study examined the extent to which the ownership of local stations (specifically whether the station was owned-and-operated by a network and/or was part of a duopoly) affected, if at all, the local content of television news broadcasts.[54]

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[47] This study was presented at the Telecommunications Policy Research Conference held in September 2007. It is attached as app. A, *and also available at* the Social Science Research Council web-site, http://mediaresearchhub.ssrc.org/ownership-matters-content-localism-ownership-on-local-television-news/resource_view.

[48] *Yanich* at 8.

[49] *Id.* at 24.

[50] *Id.* at 8.

[51] *Id.* at 9. The sample includes local television newscasts recorded by the Project for Excellence in Journalism. *Id*. at 7.

[52] *Id.*

[53] *Id.*

[54] *Id.*

The Yanich study finds that "ownership does matter" and that "consolidated ownership negatively affects the proportion of local content on local television news broadcasts."[55] While Yanich notes that the sample size suggests some caution in the interpretation of the results, he finds a "consistent pattern" in the effect of ownership characteristics on local news content.[56] Specifically, Yanich finds that:

- Duopoly stations not owned-and-operated by networks produce almost nine percent less total news and over ten percent less local content than stations that are neither duopolies nor owned-and-operated.

- Duopoly stations that are owned-and-operated by networks produce slightly more total news content (about 3%) than stations that have neither of these conditions. However, they produce significantly less local content (over 16%) than independent stations.

- Stations that were owned-and-operated but not part of a duopoly produced more total news content than stations that were not owned-and-operated nor duopolies (by over 5%). However, they also produced less local content (by over 12 %).[57]

Because Yanick, unlike Shiman, distinguishes between local news and total news, its findings are of much greater relevance to the public interest goals of localism and diversity. Moreover, in finding that duopoly stations, whether or not they are also network owned and operated, broadcast less *local* news content, the Yanich study suggests that the public interest would be best served by returning to the rule prohibiting common ownership of television stations in the same market, as UCC et al. called for in their comment filed last fall.[58]

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[55] *Id.* at 24-25.
[56] *Id.* at 24.
[57] *Id.* at 24.
[58] *See* Comments of Office of Communication of United Church of Christ, National Organization for Women, Media Alliance, Common Cause and Benton Foundation, at Section II.A. (filed in MB Dkt. 06-121, Oct. 23, 2006) (emphasis added).

III. Studies 5 and 10 Do Not Support Further Relaxation of the Local Radio Rule

Only two commenters, Clear Channel and NAB, comment on the relevance of the FCC studies for the local radio rules. Both generally argue that the studies support further relaxation of the rule. The studies, however, actually provide little or no support for allowing further consolidation of the already highly consolidated radio industry.

A. Radio Consolidation Does Not Promote Diversity

Clear Channel and NAB cite Study 5 for the proposition that "radio consolidation is associated with a largely positive effect on diversity."[59] They focus on Study 5's findings that "[c]onsolidation of radio ownership does not diminish the diversity of local format offerings," and that "market level analysis suggests that more concentrated markets have less pile-up of stations on individual format categories."[60] However, these claims are premised on an incorrect conception of diversity. The "Commission's core policy objective [is] facilitating robust democratic discourse in the media."[61] Such democratic discourse is not measured by the number of minutes a radio station devotes to news programming or by the number of different radio station formats in a market. Instead, it has been the Commission's "longstanding determination that the policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity."[62]

Study 10 is the only study that measures viewpoint diversity. It reveals that common ownership of media outlets in markets is alarmingly high, with four firm concentration ratios

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[59] Comments of Clear Channel Communications at 5 (filed in MB Dkt. 06-121) (Oct. 22, 2007) [hereinafter Clear Channel]; NAB at 20.

[60] Tasneem Chipty, *Station Ownership and Programming in Radio* at 3 [hereinafter Study 5]. UCC has already addressed why "pile up" is not relevant to diversity. UCC at Part VI.A.2.

[61] 2002 Biennial Review Order, 18 FCC Rcd at 13631.

[62] *Id.* at 13629.

averaging 97% in smaller markets and 84% in the 50 largest markets.[63] These disturbing concentration statistics across local radio markets provide compelling justification for the Commission to tighten, not relax, radio ownership limits.

B. The Financial Condition of the Radio Industry Does Not Provide Any Basis for Further Relaxation of the Radio Limits

Clear Channel and NAB suggest that further relaxation of the radio ownership limits is needed for the radio industry to remain profitable. For example, Clear Channel argues that radio broadcasters "are struggling to remain competitive in the ever-expanding audio programming marketplace."[64] NAB claims that the "fact that listening levels have declined to the greatest extent among younger listeners – those who use the Internet more and are more likely to have iPods or other MP3 players – further indicates that competitive factors, and not the joint ownership of stations, has caused the recent declines in radio listenership.[65]

Nothing in Study 10 indicates that the radio industry is no longer financially viable or that its financial condition has had a negative effect on the listening public. And even if the financial condition of the radio industry were a relevant consideration, Study 10 nonetheless shows that the radio industry is doing pretty well overall. It finds that "radio company stocks overall outperformed the broader market, as reflected in the S&P 500 median stock returns, in most quarters, until the year 2000" and that the EBIT[66] margins for radio broadcasters "have consistently outperformed the S&P 500 median since the first quarter of 2002."[67]

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[63] George Williams, *Review of the Radio Industry, 2007* at 22 [hereinafter Study 10].
[64] Clear Channel at 2.
[65] NAB at 24, n.52.
[66] "The ratio of a firm's earnings (before subtracting interest and taxes) to the firm's total sales." Study 10 at 10.
[67] *Id*.

Moreover, Clear Channel Communications, which is the country's largest radio broadcaster and would be the chief beneficiary of any further relaxation of the radio limits, has outperformed the S&P 500 by a factor of over 13 since relaxation of the ownership limits, growing in market value by over 230% while the S&P grew at a rate just under 18%.[68] And although radio companies may have underperformed the S&P 500 since 2004, Clear Channel outperformed the S&P 500 during other year-long segments during that time,[69] and a recent year-to-year quarterly earnings report shows a 12% increase in revenues to $836.7M.[70] Clear Channel remains a good investment, as evidenced by recent shareholder approval for its sale in the amount of $26.7 billion.[71]

The claimed loss of listeners to satellite radio and MP3 players does not justify further relaxation of the radio limits. As a threshold matter, none of the studies address the causes of listenership decline. In fact, Study 10 explains that "[f]urther analysis, which is beyond the scope of this report, is required to explain whether these changes in radio audience and industry concentration reflect any causal links."[72] It is equally possible that consolidation and decreased program quality is responsible for any declining listenership.

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[68] Google Finance, *available at* http://finance.google.com/finance?chdnp=1&chdd=1&chds=1&chdv=1&chvs=maximized&chdeh=1&chfdeh=0&chdet=1193947200000&chddm=1177485

[69] For example between February 2006 and February 2007, the most recent anniversaries of the relaxed ownership limits, Clear Channel stock outperformed the S&P 500 by a factor of two. Google Finance, *available at* http://finance.google.com/finance?chdnp=1&chdd=1&chds=1&chdv=1&chvs=maximized&chdeh=1&chfdeh=0&chdet=1193947200000&chddm=1177485

[70] *Clear Channel Outdoor Reports Second Quarter 2007 Results*, *available at* http://www.clearchannel.com/corporate/documents/Clear Channel Outdoor (CCO) Second Quarter07 Earnings Release Final Draft.pdf.

[71] Frank Ahrens, *Clear Channel Sale to End Era*, WASH. POST, Nov. 17, 2006 at D01, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/11/16/AR2006111600537.html.

[72] Study 10 at 15.

Because they are licensed to serve different purposes, it would not be reasonable to expect that satellite radio would serve as an adequate substitute for local radio stations. Local radio stations receive licenses to serve specific local communities. Satellite radio is licensed as a national service and is forbidden by FCC rules to broadcast locally originating content.[73] Indeed, Chairman Martin recently reiterated that the FCC "require[s] [satellite radio] to provide a national service. That is one of the most critical aspects of their licenses."[74] Thus, the existence of national satellite radio licensees has little bearing on media ownership rules at issue here, which were created to ensure diversity of voices at the *local* level."[75]

C. The Studies Are Silent on How Radio Ownership Impacts Localism

Radio has the most potential for broadcasting local content because it is the least expensive broadcast medium. In recognition of localism's importance, the Commission explained that it "remain[ed] firmly committed to the policy of promoting localism among broadcast outlets."[76] Yet despite the Commission's commitment to localism, the studies largely

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[73] *See Establishment of Rules and Policies for the Digital Audio Radio Service*, 12 FCC Rcd 5754 (1997). In licensing satellite radio providers the FCC distinguished satellite broadcasting from terrestrial broadcasting because "it is a national service." *Id*. at 5763. Indeed, the Commission expressed the hope that the national focus of satellite broadcasting would incentivize terrestrial broadcasters to offer more local programming in order to further differentiate themselves from satellite radio. *Id*. at 5768.

[74] "*FCC Chief Endorses 'Bright Line' Dividing Local, Satellite Content*," RADIO INK (Sept. 28, 2007).

[75] Even if satellite radio were part of the same market as terrestrial radio, the fact that Clear Channel transmits content on numerous satellite radio stations, and has a financial interest in XM Radio means, by definition, that it is not competing with satellite radio. "Nashville, KISS, Mix, Sunny, and WSIX are programmed by Clear Channel." http://xmradio.com/. *Company News; G.M. and Clear Channel Buy Stake in XM Satellite Radio*, NEWYORK TIMES, *available at* http://www.nytimes.com/. (June 9, 1999).

[76] 2002 Biennial Review Order at 13644.

fail to analyze the impact of ownership on localism.[77] In fact, Clear Channel's only argument on localism is that Study 5's finding that "stations operating in markets with more commonly owned stations achieve higher ratings, than do independent stations" supports "the view that commonly owned stations serve the needs and interests of their audiences--including their needs and interests for locally-oriented news and information--well."[78] But localism is not measured by ratings. As the Commission explained, it is measured by the extent to which "programming … is suited to the tastes and needs of their community" and by "the quantity and quality of local news and public affairs programming."[79] Study 5 does not analyze the extent to which stations serve local tastes and needs, nor does it assess the quantity and quality of local news and public affairs programming. Thus, the studies provide no basis for concluding that further relaxation of the radio limits would promote localism.

D. The Studies Provide No Basis for Repealing or Relaxing the Radio Limits

Clear Channel asks the Commission to repeal the local radio ownership rule in its entirety or at a minimum, modify it to allow "up to ten stations in markets with between sixty and seventy-four stations, and ownership of at least twelve stations in markets with seventy-five or more stations."[80] However, the studies provide no justification for the existing caps that the court found to be arbitrary and capricious,[81] much less for raising the caps to ten or twelve stations.

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[77] Consumers Union at 2.
[78] Clear Channel at 8, *citing* Study 5 at 3, 45.
[79] 2002 Biennial Review Order at 13644.
[80] Clear Channel at 9.
[81] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 432 (2004), *cert denied*, 545 U.S. 1123 (June 13, 2005) (Dkt. Nos. 041020, 04-1033, 04-1045, 04-1168, 04-1177).

IV. Studies 6 and 7 Do Not Support Industry Claims that Market Forces Alone Determine Content

Several industry commenters argue that ownership limits are unnecessary because market forces, as opposed to ownership characteristics, determine programming content. For example, NAB suggests that "political orientation of newspapers is driven more by the ideology of the targeted market than by ownership."[82] Belo claims that Study 6's findings "suggest that any partisan viewpoint that may have been exhibited in the local newscasts in each market most likely is associated with average partisan voting preferences in that market and not ownership."[83] These commenters base their assumptions on either Study 6's finding that 3 out of 4 measures of partisan slant are correlated with audience voting patterns in a presidential election,[84] or Study 7's observation, which its authors admit "is beyond the scope of this report," that "recent research suggests that media content is driven much more by demand considerations (*i.e.*, consumer preferences) than supply factors (*i.e.*, owner preferences)."[85]

Even if audience demand exerts influence on licensees' decisions about what programs or views to present, that fact does not mean that ownership is irrelevant.[86] Moreover, Study 7's observations are not based on the authors' own research, but on a single paper by Gentzkow and Shapiro that solely examines newspapers.[87] As Commenters Sandoval et al. observe, the authors of Study 7:

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[82] NAB at 9-10.
[83] Morris at 7; Belo at 9.
[84] Study 6 at 28.
[85] Study 7 at 13
[86] *See Yanich* discussion, *supra* Part II.B.
[87] Matthew Gentzkow and Jesse M. Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers,* (November 13, 2006). Working paper: University of Chicago, *available at* http://ssrn.com/abstract=947640.

> fail to recognize the different legal status that the newspaper industry has compared to that of broadcast. For example, Beresteanu and Ellickson do not even address whether conclusions about media ownership and content in the newspaper industry are comparable to that of broadcasting in light of the differences in their business models, audience and regulatory schemes. Nor do they cite or attempt to distinguish this largely unrelated research from more closely aligned (and appropriate) research on the broadcasting industry which has demonstrated a nexus between ownership and content.[88]

In addition, Study 7 suffers from various methodological flaws and limitations, specifically an unrepresentative sample that leaves out non-English-speaking publications.[89]

While Study 6 does attempt to analyze whether the political slant of programming is correlated with audience voting patterns, as discussed above, it suffers from multiple methodological flaws. Even assuming *arguendo* that its methods were reasonable, industry commenters still overstate its conclusions in asserting that partisan slant of newscasts is *caused* by viewer preferences rather than owners' preferences. Table 19 reports the relationship between DMA political preferences as measured by the percentage of the vote received by Democratic presidential candidate John Kerry and various measure of slant. It shows a statistically significant positive correlation between Democratic voting preferences in the local electorate and Democratic slant for only some measures of partisan slant under some models. [90] But a correlation is not the same as causation. It is just as likely that Democratically slanted programming caused voters to vote for the Democratic candidate instead of the other way around. Moreover, Milyo states that these results only "suggest[] that partisan slant in local television news coverage is determined *at least in part* by market forces, rather than newspaper

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[88] Comments of Catherine J.K. Sandoval, Carolyn Byerly, and Akilah Folami at 20-21 (filed in MB Dkt. 06-121) (Oct. 19, 2007) [hereinafter Sandoval].

[89] *See* Sandoval at 21-24.

[90] *See* Study 6 at 51, Table 19.

cross-ownership,"[91] not that they are caused exclusively or even primarily by market forces. Thus, it is not a fair reading of the studies to conclude that ownership has no influence on content.

Conclusion

For the foregoing reasons, as well as those stated in previously filed comments in this docket, UCC et al. respectfully request the FCC amend the broadcast ownership rules to serve the public interest as requested in our comments filed on October 26, 2006.

Of Counsel:

Jessica Gonzalez,
Graduate Fellow

Sandy Lin
Jeff Myung
Trevor Stanley,
Law Students
Georgetown University Law Center

Dated: November 1, 2007

Respectfully Submitted,

___/s/______________________
Angela J. Campbell, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Counsel for Office of Communication of the United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause and Benton Foundation

[91] Study 6 at 28 (emphasis added).